

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA**

GWEN OWENS

Plaintiff,

v.

COMCAST CORPORATION, et al.,

Defendant.

:
:
:
:
:
:
:
:
:

CIVIL ACTION NO. 02-1240

MEMORANDUM AND ORDER

Tucker, J.

November 18, 2004

Presently before this court is Defendants' Motion for Summary Judgement (Doc. 37) filed on March 22, 2004. Plaintiff filed a Response and Memorandum in Opposition (Doc. 45) on August 10, 2004. Defendant submitted a Reply (Doc 46), which this Court received on September 9, 2004. For the reasons set forth below, this Court will deny the Defendants' Motion for Summary Judgment.

BACKGROUND

From the evidence of record, taken in a light most favorable to the Plaintiff, the pertinent facts are as follows. Plaintiff Gwen Owens ("Owens") is an award-winning journalist with a Masters Degree in Broadcasting, Public Affairs and Communications. Pl's Compl. ¶ 9. In 1994, Owens began working as a show host at QVC, a direct marketing television cable network. *Id.* At the time of Owens' employment, QVC was a subsidiary of defendant Comcast. Pl's Mem. at 7. Four years later, QVC terminated Owens. Pl's Compl. ¶ 10. After her termination, Owens joined a lawsuit against QVC (the "QVC suit"), which alleged discrimination toward QVC hosts of color. Pl's Mem. at 7. Owens then began working as an anchor and broadcaster for Tri-State Media ("TSM"), another cable news operator. Pl's Compl. ¶ 10. Later, Comcast purchased TSM and Owens once again

became a Comcast employee. *Id.*

In February 2000, TSM discontinued its news broadcasts and began plans to merge the TSM news operation into CN8, another Comcast station. Pl's Mem. at 8. Comcast began the search for on-air personalities for CN8. Pl's Mem. at 10. Owens interviewed for the CN8 evening news anchor position with members of a "transition committee." *Id.* During her interview, Owens disclosed the fact that she was a party to the QVC suit. *Id.* The interviewers assured Owens that the lawsuit would not be considered in their decision. **However, members of the transition committee did discuss the QVC suit with members of Comcast management.** *Id.* According to Owens, a number of different Comcast executives were contacted regarding the QVC suit. Pl's Mem. at 11.

Owens also criticizes other parts of the selection process used to hire the CN8 anchors. Comcast's selection process consisted of interviewing and auditioning candidates for the two anchor positions. Pl's Mem. at 15. Comcast would choose anchors based on chemistry between the anchors that auditioned. *Id.* Comcast hired Arthur Fennel as its first CN8 news anchor. Mr. Fennel was already a news anchor in the Philadelphia market. Def's Mem. at 8. Comcast made a second offer to Kristine Sorensen, a news anchor and reporter from Pittsburgh. Ms. Sorensen was not able to accept the offer because of her contractual obligation to her employer at the time. Def's Mem. at 9. Comcast decided to offer the second position to another candidate, Kristen Page. *Id.* Ms. Page was an evening news anchor for a CBS news affiliate in Harrisburg, Pennsylvania. *Id.* Ms. Page accepted the offer but was not able to start at the time Comcast planned to launch the CN8 news broadcast. *Id.* Comcast offered a temporary anchor position to Grace Hargis, a former news anchor for a CBS affiliate in Orlando, Florida. *Id.* Although the position was initially temporary, Comcast offered Ms. Hargis the permanent position, allegedly based on her performance with Mr. Fennell.

Def's Mem. at 10. Comcast rescinded Ms. Page's offer. *Id.*

Comcast was forced to renew its search for an anchor, in December of 2000, when Ms. Hargis resigned. Def's Mem. at 10. Comcast interviewed Connie Colla to temporarily replace Ms. Hargis. *Id.* at 11. Ms. Colla was an anchor on a Philadelphia NBC affiliate between 1995 - 2000. *Id.* Comcast hired Ms. Colla, but continued to look at candidates for the permanent anchor position. *Id.* at 12. Comcast later offered Ms. Colla the permanent position, which she accepted. *Id.*

Comcast also considered Owens for other positions besides the CN8 anchor opportunities. In January 2003, Comcast opened a position for a host of a morning show as well as a mid-day news anchor. Def's Mem. at 13. After reviewing several audition tapes, Comcast chose eight finalists. *Id.* at 14. Owens was not one of the finalists. From the pool of finalists, Comcast chose Cindy Edwards and Cathy Ballou to co-host the morning show. *Id.* Comcast also selected Kevin Walsh to anchor the CN8 midday news. *Id.* Owens continues to work for Comcast as a reporter and a back-up anchor for the evening news broadcasts. *Id.* at 16.

LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is "material" if it might affect the outcome of the case under the governing law. *Id.*

A party seeking summary judgment always bears the initial responsibility for informing the district court of the basis for its motion and identifying those portions of the record that it believes

demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant’s initial *Celotex* burden can be met simply by “pointing out to the district court that there is an absence of evidence to support the non-moving party’s case.” *Id.* at 325. After the moving party has met its initial burden, “the adverse party’s response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). That is, summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing “sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex*, 477 U.S. at 322. “[I]f the opponent [of summary judgment] has exceeded the ‘mere scintilla’ [of evidence] threshold and has offered a genuine issue of material fact, then the court cannot credit the movant’s version of events against the opponent, even if the quantity of the movant’s evidence far outweighs that of its opponent. *Big Apple BMW, Inc. v. BMW of North America, Inc.*, 974 F.2d 1358, 1363 (3d Cir. 1992). Under Rule 56, the Court must view the evidence presented on the motion in the light most favorable to the opposing party. *Anderson*, 477 U.S. at 255. Credibility determinations, the weighing of evidence, and the drawing of legitimate inferences from facts must await trial. *Id.*

DISCUSSION

Owens, an African-American woman, alleges that defendant Comcast took an adverse employment action against her by failing to hire her for two news anchor positions. Owens alleges violations of Title VII of the Civil Rights Act of 1964 (“Title VII”)¹ and § 1981 of the Civil Rights

¹Title VII makes it unlawful for employers with 15 or more employees to discriminate against those employees on the basis of race, color or national origin. 42 U.S.C.S. §2000, *et seq.*

Act of 1866 ("Section 1981" or "§ 1981").² Owens claims that Comcast retaliated against her for joining the QVC suit. Additionally, Owens alleges that Comcast refused to hire her for a second anchor position because of her race. Comcast now moves for Summary Judgment on both claims.

District Courts must analyze discrimination and retaliation claims involving circumstantial evidence under the *McDonnell-Douglas* burden shifting analysis.³ The plaintiff must first establish a *prima facie* case. *McDonnell-Douglas Corp. v. Green*, 411 U.S. 792, 802 (1972). If the plaintiff successfully makes a *prima facie* case, the burden shifts to the defendant to articulate a "legitimate, non-discriminatory reason" for the adverse employment action. *Texas Dep't. Of Community Affairs v. Burdine*, 450 U.S. 248, 254 (1981). If the defendant meets this burden, the plaintiff must show that the defendant's articulated non-discriminatory reason was, in fact, a pretext for discrimination by pointing to some evidence from which a jury could either disbelieve the employer's articulated legitimate reasons or conclude that a discriminatory reason was more likely than not a motivating or determinative cause of the employer's action. *Walton v. Mental Health Ass'n of S.E. Pa.*, 168 F.3d 661, 668 (3d Cir. 1999). The plaintiff can meet this burden by "demonstrat[ing] such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable fact-finder could rationally find them 'unworthy of credence.'" *Fuentes v. Perskie*, 32 F.3d 759, 765 (3d Cir. 1994) (citations and emphasis omitted).

²Section 1981 makes it unlawful to impair a persons ability "to make and enforce contracts" because of their race. 42 U.S.C.S. § 1981.

³This Court analyzes both Title VII claims and § 1981 claims under the same burden shifting standard. *See Jones v. School District of Philadelphia*, 198 F.3d 403 (3d Cir. 1999).

A. Prima Facie Discrimination and Retaliation

Owens first alleges that Comcast retaliated against her for her participation in the QVC suit. With respect to retaliation, a plaintiff must demonstrate that (1) she engaged in a protected employee activity, (2) the employer took an adverse employment action after or contemporaneous with the employee's protected activity, and (3) a causal link exists between the employee's protected activity and the employer's adverse action. *See, e.g., Farrell v. Planters Lifesavers Co.*, 206 F.3d 271, 278 (3d Cir. 2000). By joining the QVC lawsuit, Owens engaged in a protected activity for the purposes of Title VII.⁴ Comcast then engaged in an adverse employment act by rejecting her candidacy for the initial anchor positions as well as the subsequent vacancies. The record supports a finding of causal connection as well. Members of the transition committee investigated the QVC suit with other Comcast employees. The conversations took place soon after the transition committee discovered that Owens was a party to the QVC suit. The trier of fact could reasonably conclude from this activity that the conversations regarding the suit led to the denial of the anchor opportunity.

Owens also alleges racial discrimination based on Comcast's refusal to hire her for the second anchor position. To establish a *prima facie* case for race discrimination under Title VII and § 1981, a plaintiff must show that (1) she is a member of a protected class, (2) she was qualified for the position in question, (3) she suffered an adverse employment decision, and (4) these circumstances give rise to an inference of unlawful discrimination by showing, for example, that similarly-situated individuals who are not in the protected class were treated more favorably.

⁴Title VII makes it "an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment...because he has opposed any practice made an unlawful employment practice by this title...or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title." 42 U.S.C.S. § 2000e-3.

McDonnell-Douglas, 411 U.S. at 802. The record indicates that Owens, an African-American woman, is a member of a protected class. Owens was qualified for the evening anchor position because of her years of broadcast experience. Comcast filled each one of those positions with a Caucasian female. The candidates and Owens had similar qualifications and experience. This evidence is enough for a reasonable jury to find a *prima facie* case of discrimination.

B. McDonnell-Douglas Burden Shifting

Comcast responds to Owens' accusations of discrimination and retaliation by arguing that the candidates selected for the anchor position over Owens were better qualified and performed better during the selection process than did Owens.⁵ To survive summary judgment, Owens must now offer some evidence from which a reasonable fact-finder could conclude that Comcast's business reasons for not offering her the positions were pretextual. *Fuentes*, 32 F. 3d at 764. Owens may show pretext in two ways. One way is by casting "substantial doubt" upon Comcast's reasons for hiring other candidates over her. *Id.* at 765. A second way would be for Owens to submit evidence from which the fact finder could conclude that the illegitimate factor more likely than not was the reason for the hiring decision. *Id.* Owens only needs to raise a material issue of fact on either ground to survive summary judgment.

The record contains many material factual disputes regarding Comcast's hiring decision. The first issue pertains to the process used to hire the evening anchors. David Shane, a Comcast executive, gave deposition testimony that the anchor candidates were tested for on-air chemistry. Pl's Mem. at 15. However, the record shows that many of the candidates did not undergo live

⁵Comcast also argues in their brief that this Court should treat each time Owens was denied a position as a separate claim. Def. Rep. Mem. at 8-9. This Court agrees that each instance is a separate claim and treats them separately for the purposes of deciding this motion.

auditions. In fact, Arthur Fennell was hired without an audition. *Id.* After Comcast hired Mr. Fennell, none of the candidates auditioned with Mr. Fennell for the second anchor position, further questioning the consistency of Comcast's methods. A reasonable jury could choose to disbelieve Comcast's account of the process. If a jury doubts the process, they could find pretext under these facts.

Additionally, Owens raises many material issues of fact regarding the criteria used to choose the evening anchor candidates. There is evidence in the record that Comcast considered name recognition in the Philadelphia market when evaluating the candidates. However, Owens argues that three of the anchors chosen, Sorensen, Page and Hargis, did not have exposure in the Philadelphia market while she did have such recognition. Comcast responds by attacking Owens' claim that she is recognized in the Philadelphia market. Def. Rep. Mem. at 9. Comcast also submits that they did not exclusively seek an anchor with Philadelphia market exposure for the initial anchor positions. *Id.* However, the record contains enough evidence to raise a dispute over the validity of Comcast's criteria. There are also issues of fact regarding Owens' performance during the audition and Comcast's evaluation of her qualifications relative to the other candidates. **Comcast felt that Owens performed "only fair" in her live audition.** Def. Mem. at 7. Comcast also described Owens' performance as "forced and mechanical." *Id.* Owens points to the lack of evidence submitted by Comcast to support their interpretation of the live auditions. Pl's Mem. at 36. Based on the record, a jury could find that Owens performance during the auditions was not a factor in the decision and conclude that Comcast's unsupported evaluation was a pretext for discrimination or retaliation. The questions regarding Comcast's criteria and evaluation are sufficient to submit for trial by jury.

Finally, the numerous conversations regarding the QVC suit raise additional questions about

Comcast's business reason for refusing to hire Owens. Owens discussed the OVC suit with members of the transition committee during her interview for the evening anchor positions. Pl's Mem. at 10. Subsequently, a member of the transition committee contacted Mike Doyle, Comcast's Cable East President, to ask his advice. *Id.* at 11. Doyle then called Comcast's Vice-President for Human Resources, Alan Peddrick. *Id.* Peddrick called Thomas Clardy, the Vice-President of Human Resources for QVC. *Id.* at 12. Comcast General Counsel, Stanley Wang, and QVC General Counsel, Neil Grabell, also had a conversation about the QVC suit. *Id.* **At the end of the conversations, Comcast argues, Doyle instructed the transition committee that the QVC suit should not be a factor in the evening anchor selection process. *Id.* at 6. Even though, as Comcast suggests, the conversations are evidence that they were trying to avoid a retaliation claim, a reasonable jury could find these conversations to be evidence of an improper motive and therefore raises a question of pretext.**

CONCLUSION

Based on the aforementioned, several material issues of fact remain on Plaintiff's claims for racial discrimination and retaliation. Therefore, Defendant's Motion for Summary Judgment is DENIED. An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA**

GWEN OWENS
Plaintiff,

v.

COMCAST CORPORATION, et al.,
Defendant.

:
:
:
:
:
:
:
:

CIVIL ACTION NO. 02-1240

ORDER

AND NOW, this ____ day of November, 2004, upon consideration of Defendants' Motion for Summary Judgment (Doc. 37), Plaintiff's Response (Docs. 45) and Defendants' Reply (Doc. 46), **IT IS HEREBY ORDERED AND DECREED** that Defendants' Motion is **DENIED**.

BY THE COURT:

Hon. Petrese B. Tucker, U.S.D.J